No. 9(1)82-6 Lab-8677.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Atlas Metal Industries, Railway Road, Jagadhri.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 123 of 1978 (316-Fbd. of 1981)

between

SHRI GIAN CHAND, WORKMAN AND THE RESPONDENT M/S. ATLAS METAL INDUSTRIES, RAILWAY ROAD, JAGADHRI

Shri Surinder Kumar, for the workman.

Shri Wazir Chand Sharma, for the respondent.

AWARD

This reference No. 123 of 1978 (Ref. No. 316 of 1981) has been referred to the Labour Court, Rohtak by the Hon'ble Governor of Haryana—*vide* his order No. ID/Amb/647—78/30980, dated 5th July, 1978, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Gian Chand, workman and the respondent management of M/s. Atlas Metal Industries, Raiways Road, Jagadhri. The term of the reference was:—

> Whether the termination of service of Shri Gian Chand was justified and inorder ?If not, to what relief is he entitled ?

The Labour Court, Rohtak issued notice to the parties after receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that the workman was working in the factory since 1¼ years and was a permanent employee and terminated on 1st November, 1977 without any notice and reason and since then he is without employment and he is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman has concealed the fact from the court which are that the workman joined the respondent factory on 1st November, 1976 at a monthly salary of Rs 325. Unfortunately after 10 days, after his joining the workman met with an accident in which all the four fingers of his left hand were cut and he was rendered physically unable to perform his duties. The respondent factory is covered under the Employees State Insurance Scheme and his case was refered to the ESI for treatment and he got the treatment and did not attend the duty from 12th November, 1976 to 12th Septmber, 1977. By this accident the workman rendered permanent disablement and his entire left hand become dis-able to work. In order to compensate the ESI Corporation sanctioned pension Rs. 100 which the workman is drawing since June, 1977. In order to derive some monetary benfits from the respondent, the workman served a demand notice asking for reinstatement. Before the Conciliation Officer, the respondent pleaded that no liability is cast on the employer for giving emplyment to a person who is physically incapable to perform his duty in view of permanent disablment. The Conciliation Officer pleaded that he should be given some job on humanitarian grounds as he was unable to make his both ends meet within the amount of pension. It was agreed by the respondent to adjust the workman on a lighter job and that too on a lower pay Rs. 175 per month which the workman agreed and a settlment under section 12(3) was arrived at on 31st August, 1977. According to that settlement the wor kman has to join duty within 7 days and as per these terms he would deemed to have forefeited his right of employment as he failed to join with in the stipulated period of 7 days. As it was a matter of accommodating a handicapped person on huminatarian ground, the respondent did not stand on technicalities and allowed him to join duty on 16th September, 1977. He attended the work from 16th October, 1977 to 31st October, 1977 but ultimately it was found that due to his physically handicapped and continued ill health, he was unable to perform his duties and he was discharged on 31st October, 1977. From the above fact it is clear that the workman worked the respondent only for 10 days from 1st Nobember, 1976 to 31st October, 1977 and again he was re-employed on trial basis from 16th September, 1977 to 31st October, 1977. So no termination of retrenchment much less illegal is involved in this case. It was a discharge simpliciter owing to the continued ill-health and physical handicapped of the workman to be able to perform any work. So the reference be rejected.

On the pleadings of the parties, following issues were framed:—

(1) Whether the workman was employed temporarily. If so, to what effect?

(2) Whether the workman has been disabled to perform his duties ? If so, to what extent and to what effect ?

(3) Whether the termination of services of the workman is proper justified and in order ? If not, to to what relief is he entitled ?

(4) Relief ?

This case was transferred to me from the Labour Court, Rohtak,—*vide* Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, order No. 1(79)-80-ILab, dated 20th October, 1981 after recording the evidence of the respondent. I recorded the evidence of the workman and heard the arguments. My findings on the issues is as under:—

Issue No. 1

On this issue the representative of the respondent argued that the workman joined the duty on 1st November, 1976 on a temporary job and for trail but unfortunately he met with an accident only after 10 days after joining his service on 1st November, 1976 in which all the four fingers of his left hand were cut and he was rendered physically unable to perform his duties. as admitted by the workman in his rejoinder and as stated by the witness Shri Surinder Singh and Shri Chander Mohan, Partner of the respondent factory as MW-2 that he was appointed as temporary employee because he has no previous knowledge of this work. He further argued that on the other hand the workman has given no document and stated no where in the statement that he was employed as permanent.. Even the workman witness Shri Ranjit Singh, WW-1 has not stated anywhere in the statement that the workman was employed at a permanent job clearly shows that the work man was employed temporarily for certain period and for a certain job.

The Representative of the workman argued that as stated by the workman in his claim statement he was employed on permanent job so he was permanent employee of the factory.

After hearing the arguments of both the parties, and going through the file, I am of the view that there is no document on the file to prove this fact from either of the side and contention of the respondent is agreed by the workman in his rejoinder that he met with an accident on 11th November, 1976, and admission about the settlement before the Conciliation Officer prove that the workman was appointed as temporary as he has worked only for 10 days after joining the service so he was temporary employee and not a permanent one. So the issue is decided in favour of the respondent and against the workman.

Issue No. 2

The representative of the respondent argued on this issue that as stated by the respondent witness MW-1 the workman met with an accident on 11th November, 1976 and his case was referred to the ESI as the respondent factory come under the ESI Scheme and the workman got treated from the ESI and as a result of this accident and treatment by the ESI The ESI. Corporation sanctioned a pension of Rs. 100 from June, 1977. The workman raised the demand notice against the termination before the conciliation officer and there was a settlement under section 12(3) of the Industrial Disputes Act before the Conciliation Officer and according to that settlement the respondent agreed to adjust the workman on a lighter job on a lower pay Rs 175 per month for which the workman agreed and according to that settlement he has joined the duty after 7 days from this settlement and as per these terms he would deem to have forefeited the right of re-employment as he has failed to join within the stipulated period of seven days. Since it was a matter of accommodating a handicapped person on humanitarian grounds, the respondent did not stand on technicalties and allowed him to join duty on 16th September, 1975 on trial basis. The workman continued to work from 16th September, 1977 to 31st October, 1977 but due to his physically handicapped and ill health he was unable to perform his duty even as chowkidar and he was discharged on 31st October, 1977. He further argued that even before the Presiding Officer, Labour Court, Rohtak, the respondent offered the same to the workman which was accepted by the workman on 30th October, 1980 and he has offered to have all his claims regarding his back wages but on the same day with the next thought the workman refused to accept the offer of the respondent which shows that the workman is unable to work in the factory. He further argued that this court further tried to send the workman on duty but the workman refused to take duty on the plea that he cannot work as watchman as he has to come from home which is five K.M. away from the respondent factory. It also shows that the workman is not willing to work in the factory but want back wages and money benefits.

The representative of the workman argued that the workman is very weak and can only work as chowkidar in the day time and no other work as stated by the workman in his statement.

After hearing the arguments of both the parties, and going through the file, I am of the view that the the workman is disabled for the job which are existed with the respondent factory and the issue is decided against the workman and in favour of the respondent.

Issue No. 3

The respondent representative argued on this issue that as the workman worked only for 10 days for joining the service from 1st November, 1976 to 11th November, 1976 and met with an accident which is admitted by the

workman in his claim statement rejoinder and statement before this court and the workman has also admitted the statement before the Conciliation Officer and also admitted that he joined his duty on 16th August, 1977 according to that settlement and the workman was taken on duty according to the settlement before the Conciliation Officer under section 12(3) of the Industrial Disputes Act on trial basis and when it was found that he cannot work properly as he was not well in health so he was discharged from service on 31st October, 1977 as discharge simpliciter and there is no cause of termination. The ESI Corporation have sanctioned the pension of permanent disablement at the rate of Rs 100 per month which the workman is getting of which he has admitted in his statement as WW-1 from June, 1977. The disablement pension was ordered by the medical Board after examining the workman. As they found the workman physically disabled and cannot work on the the job which are available in the factory so he was stopped to work in the factory.

The representative of the workman argued on this issue that the workman can work as Chowkidar only but respondent not want of to give the job to the workman and he has got no means of livelihood. Even on humanitarian ground the respondent should have adjusted him which is not done by the respondent in their own interest and they have terminated the services of the workman without any reason so he is entitled for his reinstatement with full back wages.

After hearing the arguments of both the sides I am of the view that in spite of efforts made by the Labour Court, Rohtak, and by me the workman hestiate to go as they offered. The post of chowkidar is at night in which the workman is not willing to work. The workman was given the opportunity to adjust him on trial basis at a settlement before the Conciliation Officer but the workman has failed to perform his duty with the utter satisfaction of the respondent. The respondent cannot keep a person on duty which is not willing to do any job in the factory so they have rightly discharged the service of the workman. So the termination of service of the workman is justified and in order and the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 3rd August, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1785, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)-82-6-Lab./8678.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Prem Industries, Mehrauli Road, Plot No. 78, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 272 of 1981

between

SHRI RAM KISHAN, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S PREM INDUSTRIES MEHRAULI ROAD, PLOT NO. 78, GURGAON

Shri Chhote Lal, for the workman.

Shri A.D. Kolhatkar, for the respondent-management.

AWARD

This reference No. 272 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/97/81/52310, dated 22nd October, 1981 under section 10(i)(c) of the Industrial Disputes

Act, 1947, existing between Shri Ram Kishan, workman and the management of M/s Prem Industries, Mehrauli Road, 78, Gurgaon. The term of the reference was :—

Whether the termination of service of Shri Ram Kishan was justified and in order? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference. The parties filed their pleadings, after appearing in the court. The case of the workman according to his demand notice and claim statement is that he joined the services on 30th June, 1975 and worked upto 2nd April, 1980 continuously and was a permanent employee. He was terminated without any notice and warning. The respondent used to pay the workman less wages than the prescribed by the Haryana Government. The workman demanded the minimum wages from the respondent and so he was terminated. The termination is illegal and without any reason so the workman is entitled for his back wages, continuity of service and reinstatement.

According to the written statement the case of the respondent is that the reference is bad in law as the demand notice was withdrawn by the workman. He also withdrawn the application before the Payment of Wages Authority and also the application under section 33-C(2) of the Industrial Disputes Act,. 1947. The reference is barred by the *res judicata*. The workman took his full and final and this court has no jurisdiction to entertain this application. He voluntarily abandoned his services and he was not terminated, discharged, dismissed or retrenched. So this case does not fall under section 2-A of the Industrial Disputes Act, 1947 and this is not an industrial dispute. The applicant in his demand notice, dated 7th June, 1980 claimed his date of joining as 1st December, 1974 whereas in claim statement he has mentioned his date of joining as 30th June, 1975 shows vagueness of the workman's claim. The workman joined his services on 1st December, 1978 as the factory came into existance from 21st April, 1976. He started remaining absent without any information to the management. The workman did not come at the factory on 1st and 2nd April, 1980 and came on 3rd April and told the management to clear his accounts and he was asked to collect his full and final payment on 7th April, 1980 but from 4th onward he never turned up and due to his long absence his name was struck off from the mustor-roll presuming that he left the services of his own accord. On 5th June, 1980 the workman settled his dispute with the respondent and took his full and final payment and after that he raised the demand notice. So the reference is bad in law and may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad in law as it is barred by the principle of *res judicata* ?

(2) Whether the workman has lost his lien and left voluntarily ?

(3) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

(4) Relief ?

My findings on the issues are as under :—

Issue No. 1—

The representative of the respondent argued on this issue that the workman joined his services in the factory on 1st December, 1978 and he again remained absented from the duty from 1st April, 1980. The workman came in the factory on 3rd April and asked to prepare his full and final and he was asked to took his full and final from the office but after that he did not turn up in the factory and raised demand notice. After raising this demand notice the workman filed the application before the Wages Authority who summoned the respondent,—*vide* Exhibit M-31 the notice from the wages authority has stated by the respondent witness Shri Harish Jain, Manager of the respondent factory as MW-1 in his statement.

By withdrawal of the application before the Wages Authority or withdrawal of application under section 33-C(2) without deciding on merits does not debar the workman in the reference. Moreover, in the reference I have to decide about the justification of the termination and not about the money benefits. These are two different matters to be decided and the matters does not come in the *resjudicata*. So this issue is decided favour of the workman against the respondent.

Issue No. 2—

On this issue the representative of the respondent argued that the workman was a habitual absentee as shown in the photostat copy of the attendance register which are Exhibit M-1 to M-10. The workman started remaining absent from duty on 1st April, 1980 and he came in the factory on 3rd April, 1980 and asked to prepare his accounts. He was told to take his accounts from the office but after that date the workman did not turned up in the factory, without any information to the respondent in the factory. After waiting some time the respondent presumed that he left the factory and his name was struck off from the roll of the factory. His name was struck off due to long absence without information to the factory management.

The workman representative argued on this issue that the workman joined his services in the year 1975 and worked continuously upto 4th April,1980 and he was turned out on 4th April, 1980 without any notice or reason and without any termination letter. The workman was a permanent employee of the factory and the way in which the workman was thrown out was illegal and without justification. The workman was continuously working from the last six years without any complaint but the respondent was not paying the minimum wages to the workman according to the Haryana Government Minimum Wages notification and as stated by the workman he was paid Rs. 205 and tooks his signatures on Rs. 250. When he came to know of this fact very late being illiterate, agitated and demand to pay according to minimum wages notification. So the management annoyed of this fact and terminated without any reason. The workman was not absented from duty but he was turned out by the respondent on 4th April, 1980. The plea of the respondent is wrong and not proved because as the workman was an old employee, they should have informed about his absence and they should have called the workman for his duty. The respondent send no letter to the workman in this respect and failed in his duty for an old employee. He further argued that the plea taken by the respondent that the workman was a habitual absentee is wrong and not proved by any document or evidence. The workman was only terminated due to asking for the full wages prescribed by the Government.

After hearing the arguments of both the parties and going through the file, it is clear that the respondent has failed to establish that the workman abandoned his services of his own. It was the duty of the respondent to call the workman for duty because he was an old employee working in the factory since 1975. They have simply strike of the name of the workman after alleged absence. They of their own presumed that the workman has left his services without giving him any opportunity of being heard. The respondent should have heard the workman for his absence which was not done by the respondent which shows that the workman's plea is correct that he was removed from service from 4th April, 1980 on asking of full payment of wages and the workman has not abandoned his services by absenting from duty. So the issue is decided in favour of the workman and against the respondent.

Issue No. 3—

After deciding the issue No. 2 in favour of the workman it is clear that the respondent is not justified for striking the name of the workman from the muster-roll without any hearing of the workman and the termination is not justified according to law. The respondent has also taken the plea of full and final payment to the workman and the full and final was paid to the workan,—*vide* voucher Exhibit M-34 for Rs. 164.60P on wages account on 15th June, 1980. The voucher itself is not clear that for what period the respondent has paid wages to the workman and the workman is not only entitled for the wages but other benefits also as being an old employee which was not paid to the workman and this cannot be said the full and final given to the workman. So the plea of the respondent for full and final payment cannot stand in the eye of law. So this issue is decided in favour of the workman against the respondent. The workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Dated, the 3rd August, 1982.

Endorsement No. 1786, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)-82-6Lab./8679.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Aggarwal Metal Works Pvt. Ltd., Rewari.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 184 of 1981

between

SHRI BRAHAM PARKASH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. AGGARWAL METAL WORKS, PRIVATE LIMITED, REWARI

Shri Shardha Nand, for the workman.
Shri M.P. Gupta, for the respondent-management.

AWARD

This reference No. 184 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/38-79/30058, dated 16th June, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Braham Parkash, workman and the respondent-management of M/s. Aggarwal Metal Works, Private Limited, Rewari. The term of the reference was :—

Whether the termination of services of Shri Braham Parkash was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he was workng with the respondent since 1st February, 1978 and due to accident on 6th April, 1979 he was admitted in the Civil Hospital, Rewari as indoor patient for few days and later on discharged with medical rest upto 8th May, 1979. He sent the application for medical leave to the management for the above said period for which medical certificate was to be produced later on. The services were terminated by the management on the ground of absence without considering his leave application. The workman submitted his medical certificate in origical in support of his ill health from 6th April, 1979 to 8th May, 1979 and also had a interview on 7th April, 1979 to Shri Mahabir Parsad Jain, Director of the respondent factory in support of accident on 6th April, 1979. After termination he raised demand notice and produced the medical certificate (Photostat copy) before the Conciliation Officer. The respondent has illegally terminated the services of the workman without any reason and notice so he is entitled for his resinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the reference is bad in law as the case does not come under the ambit of section 2(a) as it is a case of self abandonment of service. The workman is estopped for his own acts and conducts by raising the present dispute. The demand notice, dated 4th July, 1979 was enquired by the Conciliation Officer and on the report of the Conciliation Officer, the Government ordered to file the same as it is not fit case for the reference and later on after lapse of sufficient time the Government without any reasonable cause referred the case for adjudication before this Hon'ble Court, which is violation of Industrial Disputes Act and the reference is bad in law. The workman was not appointed as Electrician w.e.f. 1st February, 1978. In fact he was appointed on application submitted by the workman which is Annexure "A". Later on he resigned from the service resignation of which is Annexure 'B' dated 11th September, 1978. The resignation was accepted by the management. The workman accepted his full and final accounts,—*vide* Annexure 'C' dated 11th September, 1978. The workman again submitted an application dated 20th November, 1978 which is Annexure 'D' for appointment and the workman was appointed afresh. The appointment letter is Annexure "E". w.e.f. 4th December, 1978 as an electrician on monthly salary of Rs. 286 which was duly accepted by him. The respondent received no information of accident on 6th April, 1979 and did not bring this fact in the notice of the respondent even during the course of any proceedings prior to this claim statement. The allegation of sickness now made in the claim statement is after thought and with ulterior motive. The respondent received no leave application or medical certificate from the workman. He was absent from duty from 6th April, 1979 without any leave and whatsoever. The workman did not report for duty or showed any reason of his absence despite letter to the workman. After waiting, the management struck off the name of the workman from the rolls with effect from 3rd May, 1979 and intimated the workman through letter Annexure 'F' according to Standing Order of the company. So the service of the workman was never terminated but the workman hismself abandoned his service. The respondent received no application or medical certificate of his sickness from 6th April, 1979 to 8th May, 1979 as he has alleged in his statement. He never interviewed by any official of the management with regard to the accident or about leave application. The workman did not produce any medical certificate of sickness before the Labour-cum-Conciliation Officer during the course of proceedings, as shown in Annexure 'G' the conciliation proceedings of the Conciliation Officer. The workman remained absent from duty for about 23 days without any leave and intimation and did not show any cause or reply of the letter of the respondent and thus the conduct of the workman in not replying the letter of the respondent is mala fide because he did not turn up for his duty. After abandonment of service, the workman accepted his full and final amount,—*vide* receipt Annexure 'H' so the reference is bad in law and the reference may be rejected.

On the pleadings of the parties, following issues were framed :—

1. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

2. Relief ?

My findings on issues is as under :—

Issue No. 1—

The representative of the respondent argued on this issue is that the workman applied for the job which is Exhibit M-1 for the post of Electrician, dated 1st February, 1978 and he worked upto 11th September, 1978 and on

that date he submitted his resignation which is Exhibit M-2, dated 11th September, 1978 which was accepted by the respondent and he took his full and final payment,—*vide* Exhibit M-3. These documents are admitted by the workman at the time of admission and denial of the documents. He has also admitted these documents in his statement as WW-1. The workman again came and gave an application which is Exhibit M-4, dated 20th November, 1978 and on that application the appointment letter, Exhibit M-5 was given to the workman which is also admitted by the workman in his statement as WW-1. So the workman was in the habit of coming and going in the service and as stated by the respondent witness Shri Tara Chand Rastogi as MW-1. The witness has produced of the record of the respondent before the corut which was admitted by the representative of the workman and the workman himself. The workman started absenting himself from 4th June, 1979 without leave application or any other intimation to the respondent. After waiting the workman the respondent sent a letter dated 13th April, 1979 to the workman for joining the duty and about his absence from 4th June, 1979. The letter is Exhibit M-9. The UPC receipt is exhibit M-10. After this letter the respondent again sent a letter, Exhibit M-11, dated 17th April, 1979. The workman has to join his duty within seven days from receipt of this letter to show cause of his absence and if no reply is received the management shall struck off his name from the roll as per terms and condition of standing order, Exhibit M-5 at clause No. 3. Even after this letter as stated by the respondent witness MW-1 the partner of the firm, the workman did not come to join the duty and did not sent any informtion about his absence. So after long wait his name was struck off from the roll of the respondent and letter Exhibit M-8, dated 3rd May, 1979 was sent to the workman about striking of the name from the roll of the company from 3rd May, 1979 and to collect his dues of any working day which was received by the workman and admitted at the time of admission and denial of the documents and also in the statement of the workman as WW-1. The workman raised the demand notice after this striking off the name of the workman and the respondent appeared before the Conciliation Officer and stated before him that the workman has absented himself from duty 6th April, 1979 to 3rd May, 1979 and his name was struck off for his long absence. He further argued that on Exhibit M-18 the proceedings before the Conciliation Officer clearly shows that the workman has simply stated before the Conciliation Officer that he joined the duty on 1st February, 1978 and he was terminated on 3rd May, 1979. He has not stated any reason. for the Conciliation Officer and did not produce any document to satisfy the Conciliation Officer. The Conciliation Officer sent a report to the Government and the Government rejected the case of the workman for reference, which is also admitted by the workman and the case was rejected by the Government,—*vide* Exhibit M-20, which was received by the respondent for the rejection of the demand notice of the workman. After this rejection the workman gave the application for bonus for the year 1979 Rs. 594. The application is Exhibit M-17, and the workman received his bonus accordingly. He further argued that the workman made an application to the respondent on 12th June, 1979 which is Exhibit M-16 for returning the C.T.D. Pass Book of the workman as he has stated in his application that he is no more interested in service and therefore requested to return his C.T.D. Pass Book to him and he has also signed at mark "A". He further argued that the workman took his full and final again on 3rd May, 1979 which is Ex. M-15. The document was admitted by the representative of the workman at the time of admission and denial of the documents. After receiving his full and final payment and the removal of the name from the roll of the factory clears that he has abandoned his services of his own, and he was not terminated. He further argued that the document produced by the workman before the court are false and fabricated because these documents were not produced before the Concilation Officer and which were not proved by the workman according to law. The workman has alleged in his application dated 7th April, 1981 that on 6th April, 1979 when he went to his home, there was a domestic dispute with a neighbour and in that dispute he got fracture in his left hand. On that he went to the police Station. There the case was registered and he was sent to the hospital and he was admitted on 4th June, 1979 and discharged on 11th April, 1979. After the discharge the doctor gave him rest upto 8th May, 1979 as stated in Exhibit W-1 and W-3 which were not received by the respondent by any means and these documents and application were only after thought. The workman has not submitted any fitness certificate before the respondent or before the Conciliation Officer and even before this Court. So these documents cannot be relied upon and cannot be believed. The workman has stated in his statement that it was a police case and the workman should have submitted the FIR in the Court and should have called the police officer to prove this fact that he got fracture in the dispute and admitted in the hospital which the wrokman failed to give any evidence in the court that he was in the hospital. Even after 11th April, 1979 when he was discharged from the hospital he could come in the factory and show his condition to the management but the workman did not appear before the mangement. Moreover the respondent were badly in need of electrician as shown in the previous letter. The workman left his services of his own and again he was appointed without any hitch and there was no question of terminating the services of the workman without any reason. So the workman left his services by absenting himself from the duty, as shown in the copy of attendance register, Exhibit M-6 and M-7. According to the Standing Order of the company and terms and conditions of the appointment letter given at clause 3 which is admitted document by the workman. So the respondent has done nothing wrong by removing the name of the workman, after so many opportunities given to the workman and the workman did not care for his service. The workman has admitted the fact in the cross examination about the address given on the UPC sent to the workman in two letters for removing his duty, dated 13th April, 1979 and 17th April, 1979. Even after this letter the workman did not turn up to join his duty or to inform the respondent about his absence, without which the respondent cannot imagine about the accident or absence of the workman. He further argued that he was dischrged from the hospital on 11th April, 1979 and did not submit any discharge certificate here in the court and before the Conciliation Officer. He also admitted in his cross examination that the never sent the Medical Certificate through registered post. He has stated in his cross examination that he gave the application at the gate. He could not tell the name to whom he gave the medical certificate at the gate without which he cannot be believed that he has given any such certificate at the gate, and when he was ill he cannot be taken on duty without fitness certificate. He

has admitted in his cross-examination that he has not given any certificate by the Doctor. This whole shows tha the workman left the services of his own and as per Standing Order the respondent removed the services of the respondent. The respondent are justified in doing it and the respondent cannot wait for such a technical person whom they required daily.

The representative of the workman argued on this issue that the workman joined the services of the respondent on 1st February, 1978 and due to bad luck he met with an accident on 6th April, 1979 and admitted in the hospital at Rewari for few days. Later on he was advised by the Medical Officer a rest upto 8th May, 1979. He sent the application for medical leave to the management for the above said period for which medical cerificate was to be produced later on. The workman has stated in his statement as WW-1 that he gave the application, Exhibit W-1 on which the doctor has reported that he was admitted in the hospital on 6th April, 1979 and discharged on 11th April, 1979 and he was advised rest upto 8th May, 1979. The letter Exhibit W-1 is dated 11th April, 1979 proved the fact that after discharge from the hospital he gave this application to the respondent-management for leave. Before this application the workman gave, Exhibit W-3, dated 7th April, 1979 to the respondent when he came to collect his salary as seventh was the pay day. He submitted the application on that day personally at the gate and received the pay. He further argued that the workman has submitted before this court the photo copy, Exhibit W-2 of the workman for the plaster of his left arm and the outdoor ticket which shows that the workman was in the Civil Hospital and was absent due to illness. He further argued as stated by the workman he contacted Shri Mahabir Parshad Jain the Director of the respondent and showed him his accident on 6th April, 1979, but inspite of this the respondent struck off the name of the workman illegally and knowingly to victimize the workman. After this removal from service of the workman he raised the demand notice and produced all the doucments including the medical certificate in support of his ill health before the Conciliation Officer but the Officer made a wrong report about the workman and on that wrong report the demand notice of the workman was rejected for reference. Then the workman made a complaint to the Joint Secretary, Government of Haryana, Labour and Employment Department which was also rejected by the Government on 28th December, 1979 as stated in the application by the workman before this Court. The workman again approached the Government and the reference was made on his request. The workman was terminated due to union activities and he is entitled for resintatement with full backwages and continuity of service.

After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the respondent and documents on the file which are admitted by the workman and his representative at the time of admission and denial of the documents and the statement of the workman supported the case of the respondent. The workman has failed to prove his case that he met an accident on 6th April, 1979 and admitted in the hospital upto 11th April, 1979 in a police case. The workman should have called the police official to prove his case and the copy of FIR which was in the police case. He should have also called the hospital record to prove this fact that he was a indoor patient from 6th April, 1979 to 11th April, 1979 and he was advised rest up to 8th May, 1979 which he failed to prove. At least he could produce the indoor ticket of the hospital to prove this fact which he has totally failed to prove this documents. There is nothing seen *mala fide* in the intention of the respondent when they have taken the workman on duty even after his resignation from duty and the workman has admitted this fact in his statement. It shows that the respondent were badly in need of such technical person and gave the job even after his resignation from the factory job. The workman has not put any allegation on the respondent for removing his name from the roll so the respondent are justified in removing the services of the workman, without any information from the side of the workman and according to the standing order and terms and conditions of the appointment letter, Exhibit M-5. So the issue is decided in favour of the respondent and against the workman and in these circumstances the workman is not entitled for any relief.

This be read in answer to this reference.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Dated the 9th August, 1982.

Endorsement No. 1787, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of he I.D. Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab/8680.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s The Haryana Handloom Weavers Apex Cooperative Society Ltd. No. 2 Industrial Area, Panipat.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 122 of 1981

between

SHRI KIRPAL SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S THE HARYANA HANDLOOM WEAVERS APEX COOPERATIVES SOCIETY LIMITED, NO. 2, INDUSTRIAL AREA, PANIPAT

Shri Karan Singh for the workman.

Shri V.K. Manuja for the respondent-management.

AWARD

This reference No. 122 of 1981 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/KNL/12-81/11229, dated 11th March, 1981 under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Kirpal Singh, workman and the respondent-management of M/s The Haryana Handloom Weavers Apex Cooperatives Society Limited No. 2, Industrial Area, Panipat. The term of the reference was:—

Whether the termination of services of the workman Shri Kirpal Singh was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice is that he was working as Weaving Master for the last four years and drawing Rs. 400 per month and was terminated on 1st September, 1979 orbitrarily without any reason and without following the prescribed procedure of law. The action of respondent is illegal arbitrary and against the principles of natural justice. So he is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the respondent is registered society under Cooperative Society Act. The previous Board of Directors was superseded and in its place new Board of Directors consisting of Government Officer with Deputy Registrar, Cooperative Society as Chief Executive Officer of this Institution nominated by the Registrar Cooperative Societies, Haryana to manage the affairs of the Society. The said Board of Directors reviewed the working and financial position of the Apex Society in its meeting held on 23rd July, 1979. The said Society which had been going from bad to worst in the past few years and suffered losses to the tune of 16 lacs. To save this society from total ruin, the new Board of Directors ordered this office to take necessary action in the retrenchment of surplus staff in its meeting. In that meeting it was decided that society should be closed down its eight production Centres and seven Sales Depots which was running in losses. Consequently all the staff which became surplus and was ordered to be retrenched. The seniority list pertaining to each category of the employee was properly gone into and notice of retrenchment was served on the established principles "first come last go and last come first go". The workman was working as Weaving Master came in the retrenchment and thus he has to be relieved. As per decision of the Board, the retrenchment notice was served upon the workman in confirmity with the rules and procedures as lay down under section 25-F of the Industrial Disputes Act, 1947. Due intimation of retrenchment in Form 'P' required under section 'C' of section 25-F was ssent to the authorities concerned and copy of the seniority list pertaining to each category of employees was affixed on the notice Board in the office of the Society as required under rule 77 of the Industrial Disputes Act, 1947. The workman working at Kaithal Production Centre was already involved in a criminal case under section 406/409 IPC registered *vide* FIR No. 27 dated 5th May, 1978 Police Station, Kaithal and the case is pending in the Court of Judicial Magistrate. The amount involved in embezzlement is Rs. 54,732.20 P. In addition to the FIR an award under section 55 & 56 of the Punjab Coop. Society Act has been given against the said workman by the Deputy Registrar, Coop. Society, Karnal for Rs. 54,732.20. The society has given whatsoever compensation was due to the workman after serving the notice under section 25-F of the Industrial Disputes Act. There were seven weaving master who were retrenched along with the workmen and they raised the demand notice against the respondent against the retrenchment before the Labour Officer-Cum-Conciliation Officer and in these cases the union had admitted the validity of retrenchment of weaving Master on 26th June, 1980 at the time of conciliation. So the reference is bad in law and may be rejected.

On the pleadings of the parties, the following issues were framed:—

1. Whether the termination of services of the workman is proper justified and in order ? If not to what relief is he entitled?

2. Relief?

My findings on the issues are as under:—

Issue No. 1.—

The representative of the respondent aruged on this issue is that as stated by Shri Gajraj Singh Tiyagi, Executive Officer of the respondent society as MW-1 the Board of director met on 23rd July, 1979. The Board was constituted by the Haryana Government and as the society was in a great loss of Rs. 16 lacs so the Government after considering all the measures surpass the previous Board of Directors and the Government Officer were appointed as Board of Directors with the rank of Deputy Registrar, Coop. Society as Head of the Board and the Chief Executive Officer of this institution was nominated by the Registrar Coop. Society to manage the affairs of the Society. The Board of Directors conveyed the meeting dated 23rd July, 1979 the copy of which is Ex. M-1 in which the Board discuss all the working and financial position of the society and after considering the losses of the society they decided to close down its eight production centres and seven sales Depots to save the society from total ruin. These production Centres and sales depots were running in losses. It was also considered

that the present strength of the employees with the society was on the excessive side. So the board decided to retrench the surplus staff from the society and ordered the society to retrench the surplus staff and prepare the notice for retrenchment. The copy of the retrenchment notice is Ex. M-2 was sent to the Government and one copy was pasted on the notice board of the society. The workman was given notice Ex. M-3 which was admitted by the workman in his cross-examination. The society prepared the seniority list of the employee category-wise which is Ex. M-4 and which was displayed on the notice board of the society and after this no objection from any side has recorded. Only two production centres out of ten production centres were allowed to run and in those two production centres only two weaving master were kept being senior most who are Shri Thandi Ram and Gurmail Singh and Shri Kirpal Singh. Being the junior most and even that one weaving master Shri Mehenti Ram was also retrenched. Before giving this notice the workman was under suspension and a criminal case under section 406/409 IPC was registered,—*vide* FIR No. 27 dated 5th May, 1978 at Police Station Kaithal in which the workman embezzled Rs. 56,277/55 of the Society. The Deputy Registerar Coop. Society, Karnal gave an award against the workman under Punjab Cooperative Society Act applicable to the State of Haryana for Rs. 54,732.20. The fact of the case is admitted by the workman in his cross-examination and the workman has been given what so ever compensation after sending the notice under section 25-F of the Industrial Disputes Act. He further argued as stated by the respondent witness MW-1 the Government was informed through Form 'P' for retrenchment and closure of this centre which is Ex. M-2. He further argued that the workman has stated nothing in his demand notice and did not give any claim statement in the court. The fact which he has admitted in his statement is WW-1 was never disclosed before this court in his demand notice and not given any claim statement. The workman in his statement has stated that no enquiry was held against him on the charge-sheet when the case is pending with the Judicial Magistrate no enquiry was required and on the other hand the enquiry was made by the Deputy Registrar, Coop. Society, Karnal and found the workman guilty and gave the award of Rs. 54,732.20. The workman is silent in rejoinder and statement that he is not guilty of embezzlement. The workman was retrenched according to law and paid what ever due under the law. The workman has not stated anywhere in the demand notice or in the statement that he was illegally retrenched. So he was retrenched according to law and there was nothing wrong in it and it is not a case of termination.

The representative of the workman argued that the workman was working as weaving master for the last four years and drawing Rs. 420 p.m. and he was illegally terminated on 1st September, 1979 without paying any compensation to the workman which is mandatory provisions of the law. He further argued that the workman was under suspension at the time of retrenchment and he was not given any charge-sheet regarding the allegation against him and suspended person cannot be removed without enquiry. So the termination was illegal and cannot be sustained and the workman is entitled for his reinstatement with full back wages.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has not terminated the services of the workman illegally and they are justified as argued by the respondent's representative. When there is criminal case against the workman pending in the Court and the award of Rs. 54732.20 P of Cooperative Deptt against the person. Such persons cannot be kept even otherwise on the duty. So the respondent is justified in action and the workman is not entitled for any relief.

This be read in answer to this reference.

Dated 10th August, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1788 dated 17th August, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under sub-section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 17th September, 1982

No. 9(1)82-6Lab/8827.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Bengal National Textile Mills Ltd., 14/5, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGK KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 163 of 1981

between

SHRI SUBHASH CHAND AND 65 OTHERS, WORKMEN AND THE RESPONDENT MANAGEMENT OF M/S BENGAL NATIONAL TEXTILE MILLS, LTD., 14/5, MATHURA ROAD, FARIDABAD

Shri Mohit Kumar, Bhandari for the workmen.

Shri R.C. Sharma, for the respondent-management.

AWARD

This reference No. 163 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/99-80/22903, dated 4th May, 1981 under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Subhash Chand and 65 others workmen and the management of M/s Benga National Textile Mills, Ltd., 14/5, Mathura Road, Faridabad.

Whether the termination of services of 66 workmen (shown in Annexure "A") was justified and in order ? If not to what relief they are entitled to ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workmen according to demand notice and claim statement is that the claimants were members of the workers union in the factory called as Suti Mills Mazdoor Union of which Shri Mohan Lal was the General Secretary and he was authorised to raise the demand notice of the workman before the management. The workmen were appointed on permanent basis as shown in Annexure "A" but their names were not entered in the muster roll and they were paid on vouchers on monthly bases and their attendance were marked in the attendance register, untill the workers raised hue and cry for getting their E.S.I. Cards. These workmen received their E.S.I. Cards after their appointments. No P.F. used to be deducted and these facilities were not given to these workmen. When these workmen demanded all these facilities the management became angry and closed the gate on 1st March, 1980 arbitrarily. No notice were served and no compensation was paid. The services were terminated when these workmen had completed one year of service. The respondent indulged in anti-labour practice and exploit labour and Government by not maintaining proper records. So the workmen are entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the demand notice by Shri Mohal Lal, General Secretary of the union for the resinstatement of 66 workers is illegal because the workmen employed in the mill never espoused the present dispute. So the reference is bad in law. The reference is of 66 workers whereas the claim statement has been filed on behalf of 14 workmen out of 66 workers and in these 14 workers the name of Shri Gopi Shankar at Sr. No. 14 was never raised and neither his name has been included in the demand notice. Shri Gopi Shankar has no dispute for adjudication. The name of Shri Surya Kant is in the reference but he had never been in the employment of the respondent. Twelve workmen named in the claim statement were badli workmen and badli workman is a person who is employed as a substitute or in place of another person who is temporarily absent or on leave. The badli workmen cannot claim any right of employment and could be terminated at any time. None of the workmen were permanent and cannot claim any right of employment. The designation and wages shown in the annexure with the claim statement is totally wrong. There is no document by which these workmen authorised any person to raise this dispute. The workmen were Badli workmen and were given jobs as and when any permanent workman is absent. So the reference is bad in law and it may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad in law ? If so to what effect ?

(2) As per reference ?

(3) Relief ?

My findings on issues is as under :—

Issue No. 1.—The representative of the respondent argued on this issue is that the Government has referred this refeence to adjudicate for 66 wokers wrongly because after this reference the representative of the CITU-appeared on behalf of 14 workmen and filed the claim statement on their behalf and the list of workman given with the claim statement for 14 workmen. Out of these workmen the name of Shri Gopi Shankar at Sr. No. 14 was never raised and neither his name is included in the demand notice, and the name of Shri Suriya Kant is shown in the reference order but he had never in the employment of the company as stated, by the respondent witness Shri Ram Sunehi, Time Keeper as MW-1 who has brought the original register for the year 1978 and which was seen by the workmen's representative in the court and out of 14 workmen who gave the claim statement in the court only two workmen came for evidence in the court which proved the contention of the respondent that the reference is bad in law as Shri Mohan Lal, General Secretary who raised the demand notice in favour of these workmen is not authorised to raise the demand notice against these workmen without which no demand can be raised. Shri Mohan Lal who is alleged to be General Secretary of the Union has not proved in the court to give his evidence in favour of the workman and told this Court that these workmen made a request to the union to raise the demand against their termination and the name of Shri Gori Shankar included in the claim statement in the annexure "A" who is not shown in the demand notice which was received in the court with the reference. Moreover 12 workmen who have come in the court at the time of claim statement have not come to give his statement in the court which shows that these signatures taken on the authority letter of the representative are not genuine and they have taken without the presence of these workmen. Had these workmen interested in their reference case they should have come to give

their statement before this Court. Further more Shri Balbir Singh one of the workmen as WW-1 stated in his statement that some of the workers took their full and final from the management. The workman has not stated in his statement that they authorised Shri Mohan Lal, General Secretary to raised this demand without which this cannot be said a demand of these workmen who have chosen not to come in the court to persue their cases. So the reference is bad in law.

The representative of the workman argued on this issue that these workmen were permanent employees of the respondent and they terminated their services on 1st March, 1980 without any notice and they were the members of Suti Mazdoor Union of the factory of which Shri Mohan Lal was the General Secretary and he was duly authorised to raise the demand of these workmen before the management. After this demand notice there was a conciliation proceedings where all the workmen were present before the conciliation officer and which was proved before him that these workmen authorised the General Secretary to aise the demand against these 66 workmen and on that proceedings and report the reference was sent to the court for adjudication. So the reference is not bad in law

After hearing the arugments of both the parties and going through the file, I am of the view that the arguments put forwarded by the workman's representative have some wait and the reference is not bad in law and the issue is decided in favour of the workman against the respondent.

Issue No. 2.—The representative of the respondent argued on this issue that out of 14 workmen who have signed the authority letter of the representative of the workmen is not genuine as they have not come in the evidence before this court. The name of Shri Gopi Shankar at Sr. No. 14 at Annexure 'A' with the claim statement had never been included in the reference sent to this court. So there is no case of this workman. The name of Shri Suriya Kant has shown in the reference order but this workman had never in the employment of the respondent as shown in the attendance register which was brought in the court and show in the court the copy of which is Ex.M-1. Out of these fourteen (14) workmen twelve (12) workmen named in the annexure "A" with the claim statement were badli workman and badli workman is a person who is employed as a substitute in place of another person who is temporarily absent or is on leave. The respondent has to provide such things because they have 800 workmen at their roll and out of 800 workmen some workmen remain on leave. To run the factory efficiently these workmen were appointed on their places and these workmen were of the same categories. The Badli workers cannot claim any right of job and can be terminated at any time. The workman have failed to prove this fact that they were permanent employees of the factory rather they have stated in their claim statement in para No. 3 that their names were not entered in the regular muster roll and they were being paid on vouchers on monthly basis. Their attendance was marked in the temporary registers. In para No. 4 they have stated that it did not deduct their provident fund and the workers were not provided with the facilities as per factories Act and Standing orders as such leave holdays over time and bonus and the workmen were not given even the identity card. The workman Shri Balbir Singh and Shri Sada Nand Chaudhary has stated nothing in their statement. The workman has produced one register which is Ex. W-27 which Shri Balbir Singh WW-1 has stated in his cross-examination that he took it from the office of the factory without permission and no gate pass was prepared to out this register from the mill. There is no theft in taking out this register. This register Ex. W-27 produced by the workmen is not a genuine register. It is prepared by them as he has admitted in his cross-examination that no name of Bengal National Textile printed or stamped in the register. It shows that the register was prepared by the workman to mislead the court. This register bears no signatures authorised on behalf of the repsondent and the register itself shows that it is a prepared one. He further argued that the workman has produced a photo copy of E.S.I. card of some workmen. The E.S.I. cards are prepared for every workmen of any category under the law. So even Badli workmen have the E.S.I. cards. Ex. MW-1 to W-18 are the documents which are admitted by the respondent witness Shri Ram Sunehi as MW-1 because these documents belongs to the respondent. He has also admitted Ex. W-19 to W-25 the E.S.I. Cards of the workmen which were produced by the workman in court. But the E.S.I. card does not make the workman permanent. The persons entered in the factory as workman has the right to have E.S.I. card even he made to be temporary workman. So according to law these workmen were given the E.S.I. card which do not prove their permanent category of jobs. He further argued that the workmen could not prove that they were permanent workmen and they have completed one year of service with the respondent. So the demand notice raised by the workmen is bad in law and the reference is also bad in law and the workmen have no case against the respondent and they are not entitled for any relief.

The representative of the workman ergued on this issue that these workmen were appointed on permanent basis as shwon in Annexure "A" under the head actual date of appointment. But they were not given any appointment letter because the respondent has been indulging in anti labour practice to exploit the labour and the Government by not maintaining the records. So their names were not entered in the regular registers and they were being paid monthly basis. The attendance was marked in the temporary register till the worker make hue and cry for getting the E.S.I. The E.S.I. card issued to the workmen after their several months of service showing their date of employment in the E.S.I. with immeiate effect. The respondent was making irregularities and not providing facilities to the workmen as per fctory Act. So these workmen demanded all the facilities and the respondent became annoyed with them and closed their gate as stated by the workmen as WW-1 and WW-2 on 1st March, 1980. No notice was served on them nor any compensation was paid. Their services were terminated while they had completed one year of service to victimize and to vindicate the union of the claimants. He further argued that Ex. W1 to W27 are true documents of the workmen and they can only produce this thing to prove their case. He further argued that the respondent borught the attendance register in the court which was not for these workmen and they have not brought the attendance register meant for these workmen and cancealed this fact.

After hearing the arugments of both the parties and going through the file, I am of the view that the workmen have failed to prove their case. Out of 66 workmen only 2 workmen came to give their statement in the court and only 14 workmen gave their claim statement and the workmen came in the court have failed to prove their case because the plea taken by the respondent in the written statement is admitted by the workmen in their claim statement as argued by the respondent's representative. The claim statement of the workman supported the plea of the respondent taken in the written statement and after this the workmen have no case. The workmen could not give any such evidence that they were permanent employees and working in the factory. Moreover I cannot order without which no lcaim of the workmen can be considered because the respondent has admitted about 12 workmen entered in the factory as Badli workmen and not working as permanent employees and according to law the Badli workers have no right to claim their employment. So there is no case of the workmen and this issue is decided in favour of the respondent and against the workmen and the workmen are not entitled for any relief.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Dated the 17th August, 1982.

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 1889, dated the 24th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6 Lab/8828.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Flovel Private Limited, 13/1, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 119 of 1981

Between

SHRI BUDH SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. FLOVEL PRIVATE LIMITED, 13/1, MATHURA ROAD, FARIDABAD.

Shri Mohit Kumar Bhandari for the workman.

Shri H.R. Dua for the respondent-management.

AWARD

This reference No. 119 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,— *vide* his order No. ID/FD/174—80/742, dated 7th January, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Budh Singh, workman and the respondent management of M/s. Flovel Private Limited, 13/1, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Budh Singh, was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference order. The parties, appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that he was appointed as turner on 17th December, 1976 and was drawing Rs. 445/- per month. As the claimant was active member of the union so he was a straw in the eye of management and was retrenched on 21st December, 1979. He was senior among the retrenched persons. He ought to be invited for reemployment in case a vacancy arose for the post of turner. The management advertised the vacancy for the post of turner in the News paper on 8th April, 1980 and the claimant and the claimant applied for the same and was called to join the duty on 15th April, 1980. He reported for duty on the specified date but the management refused to take him on duty. The claimant pressed for the some time and again but the management avoided to

give him duty on one pretex or another. The claimant raised demand notice on 8th May, 1980. In the Conciliation proceedings the respondent conceded to take him on duty with effect from 15th May, 1980 but on that date also they refrained from taking on duty.. The management respondent has made the fresh appointment on the post of turner disregarding the law and not taking the working on duty so the workman is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the respondent retrenched the workers as surplus according to law and there is no dispute arise. It is a case of re-employment and the case of re-employment is not covered within the definition of section 2-A of the Industrial Disputes Act. So the reference be dismissed. The workman was retrenched according to law and he received the retrenchment compensation and the case re-employment does not come under section 2(a) of the Industrial Disputes Act. So the reference be dismissed.

On the pleadings of the parties, the following issues were framed :—

1. Whether the respondent management has contravened Section 25-H of the Industrial Disputes Act, 1947 ? If so, to what effect ?

2. Whether the termination of services of the workman is proper justified and in order ? If not, to what relief is he entitled ?

3. Relief ?

My findings on the issues are as under :—

Issue No. 1—

The representative of the management argued on this issue that it is agreed that the workman was employed as turner on 17th December, 1976 and drawing Rs. 445/-. There was a shortage of power in the eespondent factory so the workman was surplus according to be seniority list Ex. M-1 dated 7th December, 1979 which was displayed on the notice board. The notice was given to the workman which is Ex. M-3 dated 20th December, 1979 that due to shortage of power raw material and lack of funds the workman was a declared surplus. The information of retrenchment was also sent in form 'P' to the Government which is Ex. M-7 and the workman was given his retrenchment compensation and other dues,—*vide* Ex. M-5. After taking all the legal formalities, the workman was retrenched in the year, 1980 the respondent was not in need of machinist/turner so registered letter was sent to the workman which is Ex. M-9 to join his duty on 15th April, 1980 if he is interested. A telegramme was also sent to the workman Ex. M-10 that the post of machinist/turner vacant on 15th April, 1980 but at the time of scrutiny the application of other applicants the respondent decided to take the machinist and not the turner and according the workman was informed,—*vide* Ex. M-10 that "with reference to your application dated 15th April, 1980 we wish to inform that at present no appointment of turner was being made" and another letter Ex. M-12 was sent to the workman dated 26th April, 1980 that "you can come for interview/test at our work on 5th May, 1980 at 10.30 a.m.The workman was again informed,—*vide* Ex. M-13 dated 5th May, 1980 that they have taken the machinist and not turner so he can not be taken on duty. The respondent was not in need of turner so the workman was not taken so he was informed through a letter and telegramme. The intention of the respondent was not bad and they want to take the workman on duty but there was no need of turner the workman was not taken on duty. So the respondent has done nothing wrong against the law mentioned in section 25-F of the Industrial Disputes Act.

The representative of the workman argued that the respondent has admitted the fact that the workman joined as turner on 17th December, 1976 and was drawing Rs. 445/- per month at the time of retrenchment/termination on 21st December, 1979. The retrenchment compensation was also paid to the workman. The respondent retrenched 6 turners. The workman was senior to all the retrenched workers. The respondent advertised the vacancies in the news paper which is Ex. W-1 'Nav Bharat Times' dated 8th April, 1980 in which at Serial No. 2 it is clearly mentioned that turner I.T.I. pass having 6 years experience are required. On seeing this advertisement the applicant wrote to the respondent to employee him according to the provisions of law as stated by the workman as WW-1. He further stated that he received a telegramme and the registered letter and wrote letter Ex. W-2 through registered post, and receipt Ex. W-3 and acknowledgement W-4 to the respondent. He received a telegramme for interview and a letter Ex. M-9 and M-10. He went for interview but he was not called for the same. When the workman was not called for interview then he sent a letter Ex. M-5 and received no reply. He received a letter M-11 that they are not in need of turners. Again the respondent called the workman for interview and was not interviewed at that time also. Then the workman sent the letter Ex. W-6 and raised the demand notice. In the conciliation proceedings the respondent agreed to take the workman on duty on 15th May, 1980 but when the workman approached the respondent they refused to take the workman on duty. The respondent has employed Shri Jagbir Singh, Ram Narain, Raj Singh, Vijay Pal Singh as turner at the time when the workman was called for interview. These turners were junior to the workman which were retrenched as they are shown on Ex. M-2. The workman is shown at Serial No. 1, Jagbir Singh at Serial No. 2 Ram Nagina, Serial No. 3, S.A. Siddigue, Serial No. 4, Raj Singh Chavan

Serial No. 5, Shri Vijay Pal Singh, Serial No. 6. He further argued that the statement of the workman was also supported by Shri Bhaiya Lal his co-workman and WW-2 who has stated in his statement that Shri Ram Nagina, Raj Singh, Jagbir Singh. Vijay Pal Singh employed by the respondent, were junior to the workman. After the statement of this workman the respondent has not produced no document to rebut the statement of the workman and saying that these junior workman were not employed by the respondent. It shows that junior persons were employed by the respondent and senior most workman shown in the seniority list of the respondent retrenched on 21st December, 1979 which is Ex. M-2 clearly shows that the respondent has contravened section 25-F of the Industrial Disputes Act, and the workman should have been taken first before employing the other retrenched employee as he was the senior amongst the all according their own seniority list. He has referred section 25-F of the Industrial Disputes Act, which is as under :—

> "Where any workman are retrenched and the employer proposes to take into his employ any person he shall in such manner as may be prescribed given an opportunity to the retrenched workman who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer themselves for re-employment shall have preference over other persons ?"

and according to that the claimant full fill all the conditions and it was mandatory on the part of the respondent to re-employee the retrenched workman according to law.

After hearing the arguments of both the parties, and going through the file I am of the view that the respondent has failed to prove this case. On the other hand the claimant has fully convinced that he has the first preference over the other employees taken as turner. The respondent has failed to prove that they had not taken the turner after this advertisement Ex. WW-1 according to the statement of witness of the claimant and the statement of the claimant which can not be disbelieved by any way. The junior turners according to the Seniority list of the respondent Ex. M-2 was taken on duty and the workman was avoided by any reason best known to the respondent which is against the law and section 25-H of the Industrial Disputes Act which is mandatory on the part of the respondent. So the respondent has contravened section 25-H of the Industrial Disputes Act for not employed the claimant after the advertisement and the workman presented himself according to the directions of the respondent's letter Ex. M-9 and M-10. So the issue is decided in favour of the workman against the respondent.

Issue No. 2—

Issue No. 2 is as per reference.

There is no need to discuss this issue at length as it was not the case of termination but refusal of the respondent to take the workman on duty was unjustified in the law and the statement of the workman and his co-workman which was not rebuted by the respondent. The respondent should have prove here in the court that they have not taken any junior persons as turners which was proved on the file. So it is presumed that they employed junior persons and not employed the claimant according to law. So the claimant is entitled for his reinstatement with full back wages and continuity of service from the date of appointment of other turners as stated by the workman in his statement.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Dated the 17th August, 1982.

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 1890, Dated 24th August, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.